UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION COMMISSION TO DETERMINE COMPENSATION

ROCKIES EXPRESS PIPELINE, LLC

Plaintiff, : Case No. 2:08-CV-554

vs. :

4.895 ACRES OF LAND, MORE OR LESS,

IN BUTLER COUNTY, OHIO

(PIPELINE RIGHT-OF-WAY SERVITUDE)
JACK AND BRIGETTE CORNETT

AND UNKNOWN OWNERS, et al.

Defendants. :

REPORT AND RECOMMENDATION OF THE COMMISSION TO DETERMINE COMPENSATION WITH RESPECT TO THE 6 WEST LONGWALL PANEL OF THE PROPERTY OWNED BY THE MURRAY COMPANIES

I. Introduction

A hearing was held by The Commission to Determine Compensation in the case of Rockies Express Pipeline, LLC v. 4.895 Acres of Land, More or Less in Butler County, Case No. 2:08-CV-554, on November 22, 2011, to consider compensation due to the Murray Companies for damages to the 6 West Longwall Panel of the Murray Companies property. The Commission conducted its deliberations immediately thereafter on November 22, 2011. Present at the Commission hearing were Commissioner Travalio, Commissioner Hinkle, and Commissioner Trifelos. Commissioner Trifelos replaced Commissioner Paynter, who recused himself from consideration of this case.

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¹ Claims for damages to other portions of the Murray Companies' property caused by the Plaintiff's pipeline were dismissed without prejudice by agreement of the parties (ECF No. 1042).

Prior to the Commission hearing, an evidentiary hearing was held by the Commission Chair on November 21, 2011. At the evidentiary hearing, evidence was proffered by the Defendant Murray Companies concerning damages to the 6 West Longwall Panel of the Murray Companies' property. All of the evidence proffered by the Defendant Murray Companies was determined by the Chair to be inadmissible pursuant to the Court's Orders of September 15, 2011 (ECF No. 1035) and November 16, 2011 (ECF No. 1056). The Defendant then stipulated that it had no further evidence that it intended to offer at the Commission hearing concerning damages to the 6 West Longwall Panel. Both parties further stipulated that the ruling of the Chair at the evidentiary hearing was final, not preliminary, and both parties waived participation in the Commission hearing. The parties further agreed that the Commission hearing would be held on November 22, 2011.

II. Report of the Commission

At the Commission hearing no evidence of damages to the 6 West Longwall Panel was presented to the Commission by the Defendant Murray Companies. Pursuant to applicable law and the Court's Order establishing the Commission (ECF No. 597), the defendant bears the burden of proof to establish damages to the residue of property, including damages to underlying mineral interests (ECF No. 597 "Burden of Proof"). The Commission finds that the Murray Companies, having presented no evidence of damages to the 6 West Longwall Panel, suffered no compensable damages.

III. Conclusion and Recommendation

The Commission unanimously recommends that the Court find no damages to the 6 West Longwall Panel of the Murray Companies' property.

/s/ Gregory M. Travalio Gregory M. Travalio Commission Chair

/s/ James Trifelos James Trifelos Member

/s/ G. Franklin Hinkle, II G. Franklin Hinkle, II Member